(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Cr. A. 16/95 96

APPELLANTS. : 1. Dudhichappe son of Hunga Muriya, aged about 35 years, cultivator.

2. Dirdo Lakhma son of Bodda Muriya, aged about 25 years, cultivator.

Both residents of village Chhuragatta, Police Station Kukanar, District Bastar.

-Vs-

RESPONDENT : The State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) CRIMINAL PROCEDURE CODE.

(32)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

CRIMINAL APPEAL NO.14 OF 1996

CRIMINAL APPEAL NO.15 OF 1996

And

CRIMINAL APPEAL NO.16 OF 1996

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

10th/09/2004

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice

/09/2004

Post for pronouncement of Judgment: 14th September 2004

Sd/-
L.C.BHADOO
Judge

13th/09/2004

A.A.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : **HON'BLE SHRI A.S.VENKATACHALA MOORTHY, CJ**
& HON'BLE SHRI L.C. BHADOO, J.

CRIMINAL APPEAL NO.14 OF 1996

(1) Dudhichappe S/o Hunga Muriya
Aged about 35 years, Cultivator

(2) Dirdo Lakhma S/o Bodda Muriya
Aged about 25 years, Cultivator

Both R/o Village: Chhuragatta,
Police Station Kukanar,
District: Bastar.

Versus

State of M.P. (now Chhattisgarh)

CRIMINAL APPEAL NO.15 OF 1996

(1) Dudhichappe S/o Hunga Muriya
Aged about 35 years, Cultivator

(2) Dirdo Lakhma S/o Bodda Muriya
Aged about 25 years, Cultivator

Both R/o Village: Chhuragatta,
Police Station Kukanar,
District: Bastar

Versus

State of M.P. (now Chhattisgarh)

And

CRIMINAL APPEAL No.16 of 1996

(1) Dudhichappe S/o Hunga Muriya
Aged about 35 years, Cultivator

(2) Dirdo Lakhma S/o Bodda Muriya
Aged about 25 years, Cultivator

Both R/o Village: Chhuragatta,
Police Station Kukanar,
District: Bastar

Versus

State of M.P. (now Chhatisgarh)

Present: Shri R.K. Jain, Advocate for the accused/appellant.
Shri Ravindra Agrawal, Panel Lawyer, for the State/respondent.

JUDGMENT
(Delivered on 14th of September, 2004)

The following Judgment of the Court was delivered by ***L.C. Bhadoo, J:***

Since Criminal appeal No.14 of 1996, Criminal Appeal No.15 of 1996 and Criminal Appeal No.16 of 1996 filed by accused/appellants Dudhichappe and Dirdo Lakhma are arising out of the same judgment and relate to the same incident, therefore, they are being disposed of by this common judgment.

(2) The accused/appellants have preferred these appeals being aggrieved by the judgment of conviction and sentence dated 08/11/1995, passed by the learned Third Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial Nos.221 of 1990, 222 of 1990 and 223 of 1990 by which the learned Additional Sessions Judge after holding accused/appellant Dudhi Chappe guilty of the offence under Section 302 of the Indian Penal Code for committing the murders of Sukka, Deva and Dudhi Muda and holding accused/appellant Dirdo Lakhma guilty of the offence under Section 302 read with Section 34 of the Penal Code for committing the murders of the above said persons sentenced each of them in each case to undergo imprisonment for life. However, it was directed that these sentences shall run concurrently.

(3) Factual scenario of the prosecution case is as follows: On 30/09/1989 Sona Singh resident of village Chhuragatta lodged a report (Ex.P/1) at Police Station Kukanar at about 2.00 P.M. with the allegation that on previous evening at about 6.00 P.M. he was at his residence, at that time accused/appellant Dudhi Chappe came to his residence and disclosed that he along with Dirdo Lakhma have committed the murders of Sukka, Deva and Dudhi Muda by attacking them with axe and Lathi. On enquiry he further disclosed that as per revenue records, their agricultural land is in the name of his uncle Sukka (since deceased). When they demanded their share from Sukka, he said that he would not give their share and further said that he would oust them from the village. Accused Sukka came near the house of accused Chappe Muriya with the axe and assaulted him with it on his hand. On this, he

snatched the axe from Sukka, assaulted Sukka with the same axe on his neck, on account of which he fell down on the ground. At that time, accused Dirdo Lakhma also assaulted him with Lathi as a result of which Sukka died on the spot. On seeing this incident his son Deva came with the Lathi. He along with Dirdo Lakhma also assaulted him with the axe and Lathi thereby committed his murder. Seeing this the other son of Sukka namely Muda also came, on this they also assaulted him with the same axe and Lathi thereby committed his murder. The dead bodies are lying on the spot. On receiving this information he called village Kotwar Sukuldhar and other villagers namely Laxman, Meharu, Sampat Singh and others in their presence again enquired from accused Dudhichappe and Dirdo Lakhma. On enquiry they further repeated the same thing that they had committed the murders of three persons. Thereafter he along with Laxman and village Kotwar Sukuldhar went to the scene of occurrence and saw that all three bodies were lying near the house of accused Chappe Muriya. The bodies were drenched with blood. The villagers collected there. Sona Singh enquired from the villagers as to who witnessed the incident. On this Chula and Boddi said that they had witnessed the incident. They also corroborated extra judicial confession made by accused Chappe Muriya and stated that they saw accused Chappe Muriya attacking the deceased persons with axe and accused Lakhma attacking with the Lathi. On receiving this report, SHO, Police Station Kukanar namely J.R. Dhruv registered the first information report Ex.P/1, Ex.P/1A and Ex.P/1B separately for each of the murder. He took up the investigation and reached the scene of occurrence and gave notice (Ex.P/2) to the Panchas and prepared the Panchanamas Ex.P/3, Ex.P/3A and Ex.P/3B of the dead bodies of Sukka, Deva and Muda, respectively and took into possession simple soil and blood stained soil from the scene of occurrence vide Exs.P/4, P/4A and P/4B. On 01/10/1989 while in police custody accused Dudhichappe Muriya gave information (Ex.P/5) under Section 27 of the Evidence Act and in pursuance of that he got recovered the axe – weapon of offence from his house under Ex.P/7. Accused Lakhma gave information (Ex.P/6) and in pursuance of that he got recovered the Lathi – another weapon of offence from his garden vide Ex.P/8. The blood stained Baniyans of accused Dudhichappe and Dirdo Lakhma were taken into possession vide Exs.P/9 & P/10, respectively. M.S. Netam, Patwari of the village, prepared the site plan of the scene of occurrence under Ex.P/11. The dead bodies of the deceased persons namely Sukka, Deva and Muda were sent for post mortem

examination to Primary Health Centre, Tongpal. On 30-9-1999, P.W.13 Dr. Govind Singh conducted the autopsy on the dead bodies of the deceased persons and prepared the postmortem reports Ex.P/29-A, Exs.P/29-B & Ex.P/29-C of deceased Sukka, Muda and Deva, respectively. In the opinion of the Doctor the death of the deceased persons was due to shock and massive haemorrhage and the deaths were homicidal in nature. The bloodstained articles were shown to Doctor Govind Singh and he gave his report. But the said articles were not sent for chemical examination or to Serologist.

(4) After completion of the investigation charge-sheets were filed in the Court of Judicial Magistrate First Class Jagdalpur against the accused /appellants who in turn committed the cases to the Court of learned Sessions Judge, Jagdalpur fromwhere the learned 3rd Additional Sessions Judge, Jagdalpur received the cases on transfer and since all the three murders were committed at the same time and at the same place, therefore, he decided to conduct the trial of all the three cases together.

(5) After hearing the learned Public Prosecutor and counsel for the accused persons, the learned Additional Sessions Judge reached the conclusion that prima facie the offence under Section 302 of the I.P.C. was made out against accused/appellant Dudhi Chappe and the offence under Section 302 read with Section 34 of the I.P.C. was made out against accused/appellant Lakhma. Therefore, he framed the charges in all the three Sessions trials, read over and explained to the accused persons. However, the accused persons denied the charges and claimed to be tried.

(6) The prosecution in order to prove the charges against the accused/appellants examined in all nineteen witnesses at the trial. On the other hand, the statements of the accused/appellants were recorded under Section 313 of the Code of Criminal procedure. Each of the accused stated that the evidence of the prosecution witnesses are incorrect or they do not know anything. In the last, they have stated that they are innocent and have been falsely implicated in the crime on account of animosity.

(7) Learned Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused persons and after placing reliance on the testimonies of PW-1 Sona Singh and PW-17 Dudhi

Bhime, wife of deceased Sukka, and also relying the circumstantial evidence about the recovery of weapons of offences, convicted and sentenced the accused/appellants in all the three sessions cases and sentenced each of them in the manner mentioned above. However, the sentences were ordered to run concurrently.

(8) We have heard Shri R.K. Jain learned counsel appearing for the accused/appellants and Shri Ravindra Agrawal, Panel Lawyer, appearing for the State/respondent and perused the judgment and records of the trial Court.

(9) As far as the nature of the deaths of deceased Sukka, Deva and Muda being homicidal is concerned, it is not in dispute. Apart from that, PW-13 Dr. Govind Singh, who conducted the autopsy on the dead bodies of the deceased persons, has stated that on 30-9-1989 he was posted as Assistant Surgeon at Public Health Centre, Tongpal. On that day, on the requisition of Police Station Kukanar, he conducted the autopsy on the dead bodies of Sukka, Deva and Muda. On the body of Sukka he found 11 injuries on various parts of the body mainly on the forehead, neck and cheek. Out of these 11 injuries, 8 injuries were incised wounds and 3 were lacerated wounds. The injuries were caused by sharp edged weapon and Sukka died on account of the shock and excessive haemorrhage. The nature of the death was homicidal. He further stated that on the body of Muda he found 4 incised wounds on the head and neck. The left parietal bone was fractured in the area of 5x1/2 cm and the occipital bone was also fractured. The injuries were ante mortem in nature caused by sharp and blunt object. The death was homicidal in nature. The cause of death of Muda was shock and haemorrhage. He has further stated that on the same day he conducted the autopsy on the body of Deva and he noticed 3 incised wounds on the head and neck. On dissection he found that right parietal bone was fractured in the area of 6x1x1/2 cm. The injuries were ante mortem in nature caused by sharp and hard object. The cause of death was shock and haemorrhage. This witness was not cross-examined on any account. Therefore, there was no reason for the trial Court to disbelieve the evidence of this witness. The testimony of Dr. Govind Singh stands corroborated by eyewitness P.W.17 Dudhi Bhime, wife of deceased Sukka and mother of deceased Deva, who had witnessed the crime. Therefore, in view of the above medical and ocular evidence, it stands proved that the death of three deceased persons namely Sukka, Deva and Muda were homicidal in nature.

(10) Now coming to the question of involvement of the accused persons in committing the murder of three persons is concerned, the Addl. Sessions Judge has placed reliance on the ocular and the circumstantial evidence i.e. the extra judicial confession made by the accused persons before P.W.1 Sona Singh and P.W.17 Dudhi Bhime witnessed the crime. However, the learned trial Judge held that the evidence of P.W. 18 Dudhi Mase, wife of deceased Muda, was not worth reliance as she has given evidence in an exaggerated manner as she took the names of other persons that they had also assaulted the deceased persons. We have scanned the evidence on record. As far as the extra judicial confession made by the accused persons is concerned P.W. 1 Sona Singh has supported the case of the prosecution. The other witnesses have turned hostile as most of the witnesses are closely related to the accused and the deceased persons. P.W. 1 Sona Singh has stated that at about 6.00 p.m. on the relevant date when he was at his residence accused Chappe Muriya came to his house and said that he along with Lakhma assaulted Sukka, Deva and Muda with axe and Lathi and all three have died. He further stated that the dead bodies of the three deceased persons are lying in front of his house. He further disclosed that on account of some land dispute he assaulted the deceased persons. On hearing this, he went to the scene of occurrence along with village Kotwar Sukuldhar, Laxman and other villagers and saw all the three bodies were lying in front of the house of the accused Chappe Muriya. The injuries were present on the head and neck of three deceased persons. In presence of the witnesses the accused persons confessed that they had committed the murder of Sukka, Deva and Muda. Thereafter he went to the police station and lodged the reports Exs.P/1 & P/2. In the cross-examination this witness has stated that the whole agriculture land was in the name of Sukka in which the share of the father of accused Dudhi Chappe was also there. The larger field was being cultivated by Sukka and the small field was being cultivated by accused Chappe Muriya. Deceased Sukka refused to give share to the accused and on account of that some dispute was going on between them. A Panchayat was also convened to settle that dispute. In the cross-examination this witness was turned hostile, as he had not supported the report to some extent. In para-14 he has stated that accused Chappe Muriya came to his house and said that he along with accused Lakhma have committed the murder of Sukka, Deva and Muda. Accused Lakhma also made confession before him that he has also committed the murder of Sukka,

Deva and Muda. This witness has further stated that only accused Chappe Muriya came to his house. In order to place reliance on the extra judicial confession made by the accused persons, the test for placing reliance is that the extra judicial confession must be voluntary and the same is true. Now coming to the point as to whether the confession was made voluntarily and true, the defence counsel was not able to bring anything on the record in the cross-examination showing that the extra judicial confession which was made before this witness, was not voluntary, as this witness has categorically stated that at the relevant time accused Chappe Muriya came and disclosed. Whatever stated by accused Chappe Muriya to him was found correct when the village Kotwar and others reached to the scene of occurrence. Accused Chappe Muriya further disclosed to him that they have committed the heinous crime because Sukka was not giving their share of agricultural land and this fact has not been disputed by the defence counsel that there was some dispute regarding the partition of land between the deceased and the family of the accused. All the three bodies were found in front of the house of accused Chappe Muriya and the fact of disclosure that accused Chappe along with accused Lakhma assaulted the deceased persons with the axe and Lathi were also found to be correct for the reason that the injuries sustained by the deceased on head and neck and most of them were incised and lacerated wounds. For the above reason whatever confession was made by the accused before this witness stands corroborated by the factual situation and circumstantial evidence and for accused Lakhma also this witness stated that he also confessed before him. In the cross-examination nothing has come on record that this witness had any reason to speak false against the accused persons to implicate them in such a heinous crime. Even though in cross-examination this witness was declared hostile on account of the fact that some portion of the report lodged by him was not corroborated by him. As per settled law even the evidence of a hostile witness can be believed and reliance can be placed on the evidence of such witness which supports the prosecution case. During the course of argument learned counsel for the accused persons was not able demonstrate any short coming in the above evidence or was not able to point out any circumstance by which the evidence of this witness is not worth inspiring confidence. The evidence of this witness regarding the extra judicial confession stands supported by the fact that the dead bodies were found in front of the house of accused Chappe Muriya for which no explanation has

been offered by the accused persons that if they are innocent then how these bodies were lying in front of their house and why they had not reported the matter to the police and other villagers that who assaulted the deceased persons and how those bodies were lying in front of their house. Therefore, this conduct of the accused persons also supports the case of the prosecution. Further this witness has also stated that accused Chappe Muriya gave the information (Ex.P/5) to the police in his presence about the axe and the same was got recovered at his instance from his house vide Ex.P/7. He has further stated that accused Lakhma also gave information (Ex.P/6) regarding the Lathi – another weapon of offence to the police and in pursuance of that he got recovered the Lathi from his house vide Ex.P/8. The blood stained Baniyans of these accused persons were also taken into possession by the investigating officer under Exs.P/9 & P/10. It is true that these articles were not sent for chemical or serological examination. The said articles were examined by Dr. Govind Singh and the blood was found on these articles, to some extent the recovery of these articles and the examination by the Doctor lends support the correctness of the extra judicial confession made by the accused persons before this witness.

(11) Now coming to the ocular evidence, even though all other witnesses have turned hostile, as they are the relatives of the accused. P.W.17 Dudhi Bhime, wife of deceased Sukka and mother of deceased Deva and Muda, has stated that at the time of the incident she was at the residence. The deceased persons were also at the house. Her husband went outside as he was informed that he was called in the Panchayat and as soon as he went out of the house accused Chappe Muriya and three other persons namely Nanda, Hunga and Masa assaulted him. When Deva said that how his father has been assaulted, thereafter Muda also came out of the house, they were also assaulted by these persons with axe and Lathi. She has further stated that when she tried to intervene Nanda and accused Chappe also assaulted her. Accused Lakhma also assaulted the deceased persons and all the three deceased persons died on account of the injuries sustained by them. It is true that this witness has made an improvement in her evidence before the Court that apart from Chappe and Lakhma, Nanda, Hunga and Masa also assaulted the deceased persons. Therefore, learned counsel appearing for the accused persons argued that as apart from these two accused persons, this witness also

suggested the name of the other persons, as such no reliance can be placed on her testimony. As far as presence of this witness on the scene of occurrence is concerned, the same cannot be doubted as the occurrence took place in the evening at about 6.00 p.m. and that too near the house of the deceased persons and the accused. She being the wife of deceased Sukka and mother of deceased Deva and Muda, her evidence is required to be scrutinized with a little bit care for the reason that she is related to the deceased persons but whatever she has stated stands corroborated by the other circumstantial evidence viz. the injuries which were received by the deceased persons, their bodies were found in front of the house of the accused persons and also the fact that the relations between the accused and the deceased were strained on account of some land dispute and the accused persons had not explained that how the dead bodies of the deceased persons were found in front of their house and the extra judicial confession was made by the accused persons before P.W.1, therefore, on account of these factors the evidence of this witness cannot be discarded and it cannot be held to be untrustworthy or unreliable. It is true that this witness has named three more persons. As far as the name of Hunga is concerned, he is the father of the accused Chappe Muriya and other persons are also related. Therefore, their presence on the scene of occurrence cannot be doubted. They might not have taken part in the occurrence and that is why they were not made accused. Therefore, taking the name of three more persons by this witness apart from the accused persons cannot be made the basis for disbelieving the evidence of this witness for the reasons mentioned above.

(12) Learned counsel appearing for the accused/appellants contended that P.W.17 has stated that the accused persons also assaulted her. But there is no medical evidence which goes to show that she received any injury. We do not find any substance in this argument for the reason that accused Chappe assaulted with Danda (club). She further stated that she was not assaulted with the axe when she was intervening to save her husband she was also assaulted by the accused persons. She has not stated anywhere that she received any grievous injury or blood came out of the injury. She was assaulted with the club and if there was no visible injury on her body and she was not medically examined that does not mean that she was not present on the scene of occurrence. As far as the evidence of P.W.18 Dudhi Mase, wife of deceased

Muda is concerned, the evidence of this witness has been disbelieved by the trial Court for the reason that in the Court evidence she had made certain improvements and gave evidence in an exaggerated manner. We have perused the evidence of this witness and we are of the opinion that the trial Court has rightly held that she was not eye witness to the incident. But she reached the spot after hearing about the incident.

(13) In view of the above discussion and the evidence of extra judicial confession made before P.W.1 Sona Singh, the ocular evidence of P.W.17 Dudhi Bhime and the recovery of the weapons of offence, all these factors proved the involvement of the accused persons in committing the murders of Sukka, Deva and Muda. Therefore, we do not find any reason to interfere with the finding of the learned trial Court as the same is based on reliable and cogent evidence.

(14) In the result, we do not find any substance in these appeals. The same are liable to dismissed and they are hereby dismissed.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Brajesh*